



FREDERICK COUNTY PLANNING COMMISSION

September 14, 2011

TITLE: **AT&T: Sabillasville Worth Parcel**

FILE NUMBER: **SP-11-08** (AP#'s 11910, APFO 11913, FRO 11914)

REQUEST: **Site Plan Approval** (Requesting approval for new 150' tall monopole and the placement of a 50'x50' fenced compound)

PROJECT INFORMATION:

LOCATION: 6721 Debold Road
ZONE: Resource Conservation (RC)
REGION: Thurmont Planning Region
WATER/SEWER: No Planned Service (NPS)
COMP. PLAN/LAND USE: Resource Conservation

APPLICANT/REPRESENTATIVES: (as applicable)

APPLICANT: New Cingular Wireless PCS LLC
OWNER: Edward & Faye Worth
ENGINEER: Dewberry Engineering
ARCHITECT: N.A.
ATTORNEY: N.A.

STAFF: Tolson DeSa, Principal Planner
Community Development Division

RECOMMENDATION: **Conditional Approval**

Attachments:

Exhibit #1: Site Plan Rendering

Exhibit #2: B-10-16 Findings & Decision

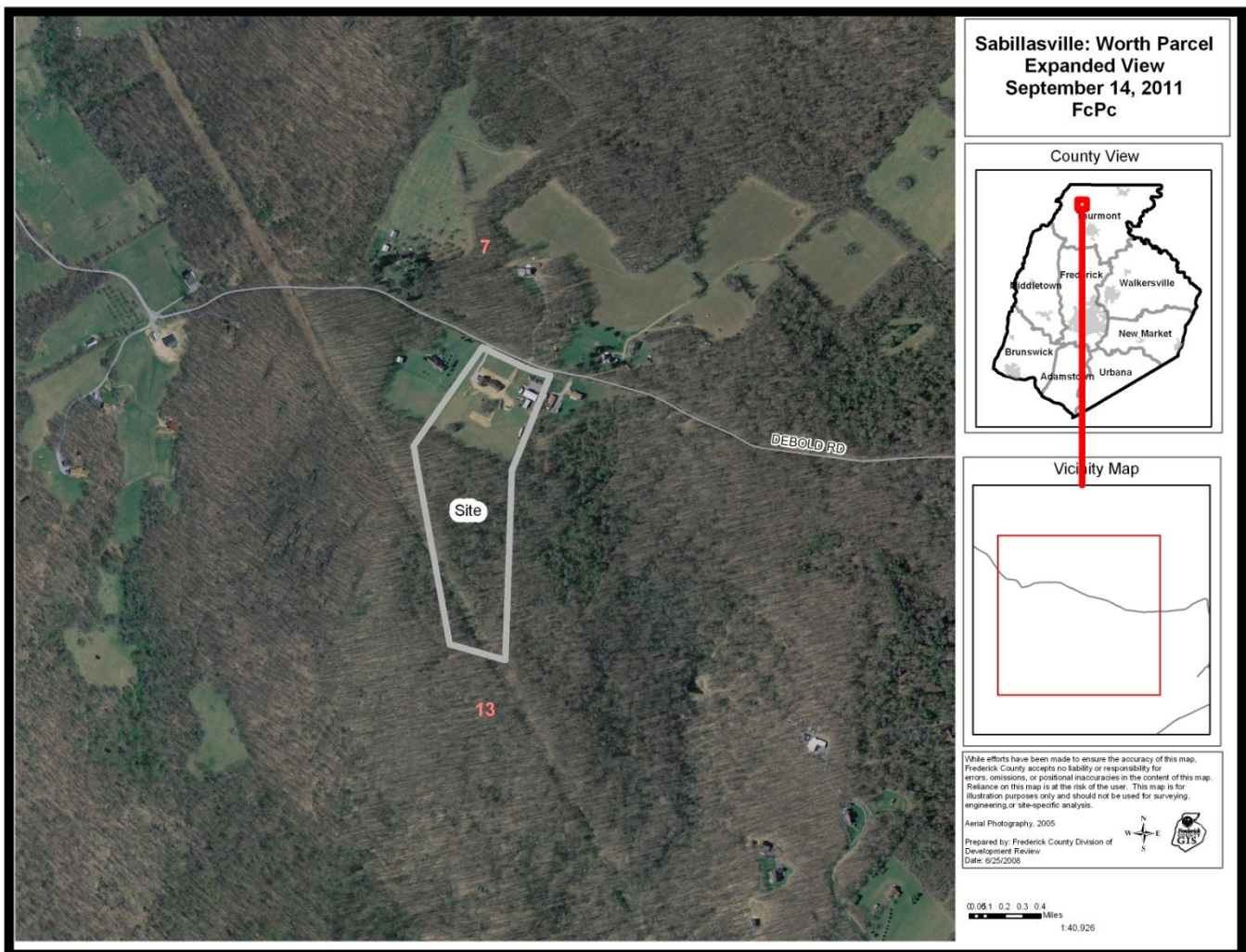
Exhibit #3: Alternative Landscape Plan Modification Justification Statement

STAFF REPORT

BACKGROUND:

This Site Plan Application: Proposed on this 22 acre parcel is a communications unipole structure of 150' in height, with a 25' x 40' lease area for a fenced equipment shelter compound at the unipole base. A 10 ft. wide landscape buffer is proposed around the fenced compound. As is demonstrated by the materials submitted by the Applicant, the facility will be located adjacent to a stand of woods just southeast of the existing residential building on site. This unmanned facility would be visited only occasionally after initial construction.

Up to three carriers could be accommodated on the proposed tower and in the fenced portion of the equipment compound according to the Applicant. The Applicant has provided materials to address the general requirements of Sec. 1-19-3.210 (B), the specific criteria of Sec. 1-19-8.332, and the specific design criteria of Sec. 1-19-8.420.



LAND USE, CIRCULATION, PARKING, DIMENSIONAL REQUIREMENTS & UTILITIES:

Land Use and Zoning Review: Communication towers in the RC zone require Special Exception approval by the Board of Appeals (BOA). The BOA approved the special exception for this application on March 24, 2011 (BOA Case 10-16 See attached Exhibit #2).

Access/Circulation, Parking Spaces, Loading Area and Road Frontage Improvements: The Applicant proposes to access the site from Debolt Road via an existing 12' wide gravel access point and proposed 12' gravel roadway. The Applicant also proposes no additional parking or loading spaces. Staff agrees that because of limited vehicle trips to the site for this particular use, no parking is needed.

Dimensional Requirements/ Bulk Standards: The standard dimensional and bulk requirements for communications towers in a Resource Conservation zone are as follows:

| <i>Use Classification</i> | <i>Minimum Lot Area</i> | <i>Lot Width</i> | <i>Setback values</i> | <i>Height</i> |
|---------------------------------|-------------------------|------------------|--|---|
| <i>Communications Tower</i> | N.A. | N.A. | <i>§ 1-19-8.420.2 (2) Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.</i> | <i>§ 1-19-8.420.2. (D) The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.</i> |

With regard to setbacks, tSheet 3 of the Site Plan application demonstrates that the fall zone is a minimum of 150 feet from all property lines.

Utilities: The parcel is classified as No Planned Service. However, this site will not require water or sewer services because this will be an un-manned facility.

ENVIRONMENTAL ANALYSIS:

Open/Green Space and Floodplain Issues: There are no open or green space requirements in the RC zone other than those noted above. Also, there are no hydrological or water buffer elements on this lease area.

Landscaping: In accordance with Zoning Ordinance Section 1-19-6.400.I, the Applicant is requesting a modification from all of the landscape screening standards for the fenced compound. The Applicant cites the remote location of the proposed monopole as well as the existing surrounding forested areas located on this site. Due to the remote location and existing vegetation on this site, Staff supports this modification request.

Storm-water Management (SWM) Design: This project was tested with regard to the requirements of the Maryland Stormwater Management Act of 2007 (SWM 2007), which became effective May 4, 2010. The Applicant must receive final approval of its Stormwater Development Plan prior to final stamp and signature of this site plan.

Forest Resource Ordinance (FRO): There are no priority systems on site. FRO mitigation requirements have been satisfied by a forest fee-in-lieu payment of \$4704.48.

MISCELLANEOUS DESIGN and ADMINISTRATIVE ISSUES:

Lighting: This tower will not require lighting, other than FAA emergency lighting requirements.

Signage: The Applicant proposes no signage with this application other than the six sq. ft. identification sign required by the Zoning Ordinance.

Fencing: The Applicant is providing an 8' chain link fence topped with 1 foot of barbed wire.

Guarantee: In accordance with §1-19-8.420.2(B), the Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release. The guarantee is to ensure proper removal of the tower if it ceases to be used for six months or more. The Applicant has noted their intent to execute this monetary guarantee but has not added this statement to the Site Plan.

Propagation Studies: As required by § 1-19-8.420.2, the Applicant has included propagation studies in the "Communications Tower Planning Commission Submittal" packet used by the Board of Appeals indicating *before* and *after* coverage information.

Photo-simulation Studies: As required by § 1-19-8.420.2, the Applicant has included photo-simulation in the "Communications Tower Planning Commission Submittal" packet showing *before* and *after* views from several vantage points.

ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO):

In General: This project was reviewed for potential impacts on schools, water/sewer and roads. This project was determined to generate no impacts on schools, utilities or traffic.

- ☐ **Schools:** The non-residential nature of this project has no impact on schools.
- ☐ **Water and Sewer:** The un-manned operations will require no water or sewer facilities.
- ☐ **Traffic:** The traffic engineer has indicated that less than one peak-hour trip will be generated on this site and is therefore exempt.

Therefore, this project is exempt from APFO.

OTHER AGENCY COMMENTS:

| <i>Agency</i> | <i>Comment</i> |
|---|-----------------------|
| <i>Engineering Section, DPDR</i> | Conditional Approval. |
| <i>Planning Section</i> | Conditional Approval |
| <i>Traffic Engineering</i> | Approved. |

FINDINGS:

The Applicant is requesting approval of a Site Plan (AP # 11910) for a communications tower monopole 150' in height with a 6' extension for lightning rod and antennae extensions, and ground facilities.

Staff finds that the Site Plan application meets and/or will meet all applicable Zoning, Subdivision, APFO and FRO requirements once all Staff and Agency comments and conditions are met or mitigated. With certain conditions of approval added, the Staff offers no objection to approval.

- 1) Site Plan approval can be given for a three-year period from the date of FcPc approval.
- 2) This project is exempt from the APFO.
- 3) The Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release.

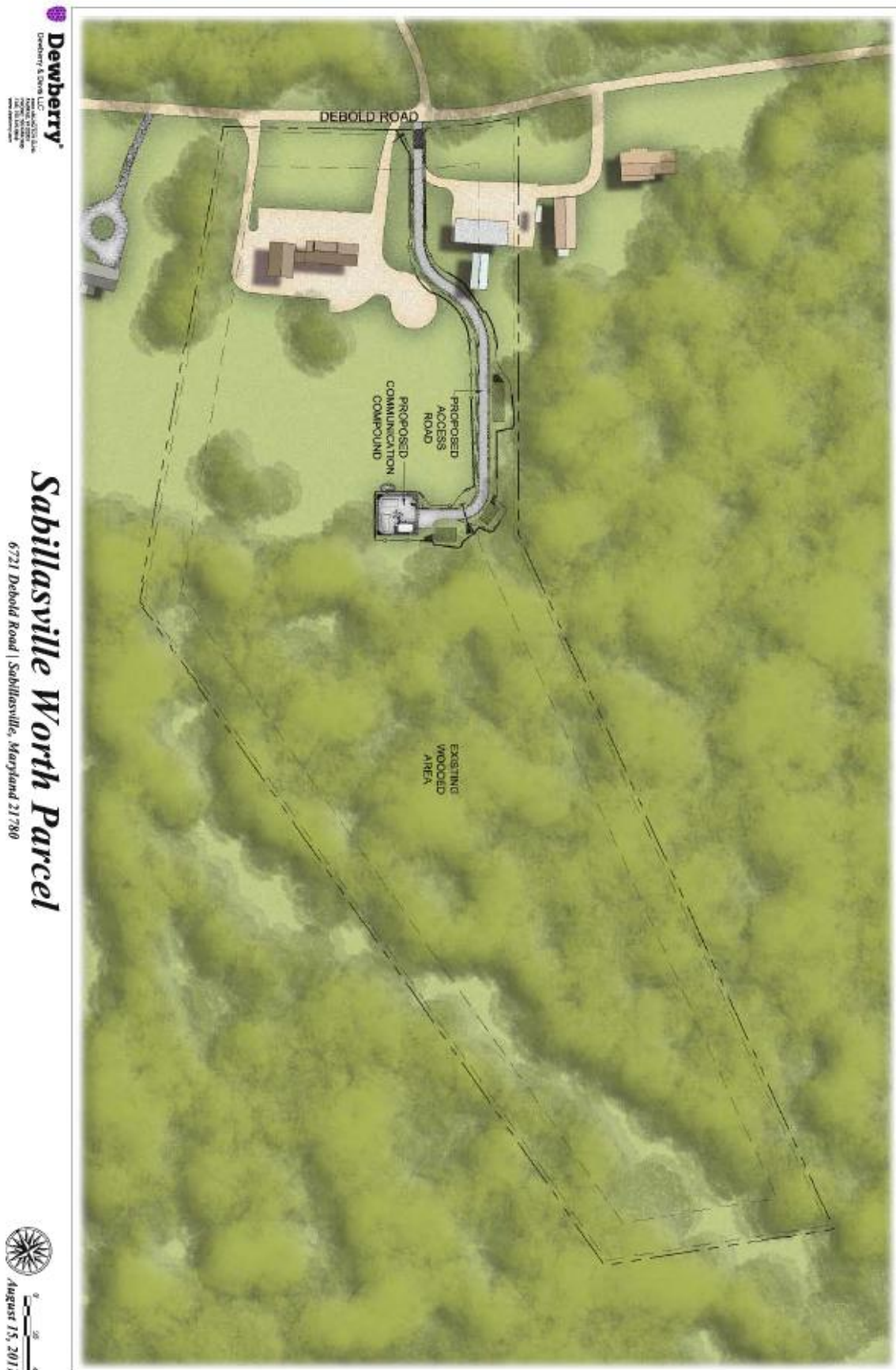
RECOMMENDATION:

The motion for approval of this site plan should include the following:

- 1) Site Plan approval can be given for a three-year period from the date of FcPc approval, and
- 2) The site plan application is exempt from APFO requirements, and
- 3) Approval of a modification to Zoning Ordinance §1-19-6.400.I to provide an alternative landscaping plan due to the remote location of the site and existing surrounding forest.

Should the FcPc choose to approve this Site Plan application (AP # 11910), the Staff would recommend adding the following conditions to the approval:

- 1) Comply with Agency comments as this project moves through the development process.
- 2) Post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release and note this on the site plan.
- 3) Provide annual update to the Zoning Administrator of emergency contact information for the tower owner and all carriers on the tower.
- 4) The Applicant must receive final approval of the Stormwater Development Plan, prior to final stamp and signature of this site plan.
- 5) Note on the site plan that the FCPC has granted the following Applicant requested Zoning Ordinance Modification Requests:
 - a. Zoning Ordinance Section 1-19-6.400.I to provide an alternative landscaping plan due to remote location of the site and existing surrounding forest.



| | | |
|-------------------------------------|---|---------------------------------|
| IN THE MATTER OF: | * | BEFORE THE |
| THE APPLICATION OF | * | BOARD OF APPEALS |
| New Cingular Wireless PCS | * | FOR FREDERICK COUNTY, MD |
| d/b/a AT&T Mobility, LLC | * | |
| c/o Mark Simanowith, Saul | * | CASE NO. B-10-16 |
| Ewing LLP | * | |
| * * * * * | * | * * * * * |

FINDINGS AND DECISIONS

This matter comes before the Board on the application of New Cingular Wireless PCS d/b/a AT&T Mobility represented by Mark Simanowith of Saul Ewing LLP (hereinafter "the Applicants") for a special exception as provided for in the Frederick County Code. The property (hereinafter "the Property") for which the special exception is sought is owned by Edward and Faye Worth and consists of a portion of 13.9 +/- acres of land, more or less, and is located on the south side of Debold Rd. approx. 0.9 miles east of Sabillasville, zoned Resource Conservation. It is further identified as Lot 1-B, Parcel 151 on Frederick County Tax Map No. 7. Applicant seeks a special exception under Section 1-19-3.210, 1-19-8.332 and 1-19-8.420 of the Frederick County Code in order to establish a 150 ft. high telecommunications monopole with a 6 ft. lightning rod north of existing power towers and a 50 ft. x 50 ft. equipment compound at the base.

The Frederick County Code, Section 1-19-3.210 (B) provides that a special exception is a matter of development policy and that the Board of Appeals "should consider the relation of the proposed use to the existing and future development patterns." In addition, Section 1-19-3.210 provides that the following conditions must be met:

1. The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and
2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and
3. Operations in connection with any special exception use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of any permitted use not requiring special exception approval; and
4. Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety; and

5. The road system providing access to the proposed use is adequate to serve the site for the intended use; and
6. A written application is submitted; and
7. A public hearing has been held.

In addition, the proposed operation must meet the requirements of Section 1-19-8.332 and 8. 420, as follows:

The following provisions shall apply to communication towers in RC and A Districts.

(A) The tower height may exceed the maximum height permitted within the RC and A Districts after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed tower height exceed 199 feet.

(B) All applications for a special exception shall include:

- (1) Computer modeling information used in selecting the site;
- (2) Listing of alternative sites considered and why not selected;
- (3) Photographs of the existing conditions of the site and area;
- (4) Photo documentation that a balloon test has taken place at the proposed site location.

(C) All applications for a tower shall be accompanied by a non-binding 5 year plan of the applicant or the locating provider, showing the existing and proposed communications network within the county.

(D) A NEPA (National Environmental Policy Act) checklist prepared in accordance with section 106 of NEPA shall be provided as part of all applications.

(E) The applicant must publicize the proposal, using a block advertisement of a size acceptable to staff, which includes a map showing the site and a 1 mile radius and must hold an informational meeting in the area of the tower within 2 weeks after submitting the application. Written notice of such meeting shall be provided to all abutting property owners of the property on which the site is located and any homeowners/community associations within the 1 mile radius.

(F) Setbacks for communications towers shall be as follows: setback from all property lines shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet from any adjoining residential structure. This setback distance may be modified by the Board of Appeals.

(G) The zoning certificate issued for a special exception shall be valid for a period of 5 years from the date that the decision of the Board of Appeals is signed. This zoning certificate shall be renewed for additional 5 year periods after review by the Board of Appeals at a regular meeting. The following are the only grounds on which renewal of a certificate may be denied.

- (1) The permittee has failed to comply with the conditions of the special exception approval.
- (2) The facility has not been maintained in a safe condition.
- (3) The Board of Appeals determines that the use of the tower for wireless communications has ceased for a period of 6 months.

(H) All special exception approvals must also comply with the requirements of § 1-19-8.420.2.

And Section 1-19-8.420:

The following design criteria shall apply to all communication towers in the HS, GC, ORI, LI, GI, MM and non-residential MXD zoning districts as well as special exceptions in the RC and A Districts.

(A) The applicant and the property owner shall be responsible for maintaining the tower in a safe condition.

(B) The tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

(C) All towers shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for 2 or more carriers. This provision may be waived by the approving body if it is determined that co-location will have an adverse impact on the surrounding area.

(D) The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.

(E) All applications for approval of communications towers shall include:

- (1) Justification from the applicant as to why the site was selected;
- (2) Propagation studies showing service area and system coverage in the county;
- (3) Photo simulations of the tower and site, including equipment areas at the base from at least 2 directions and from a distance of no more than 1 mile.

(F) As part of the site plan review, screening and fencing may be required around the base of the tower structure and any equipment buildings.

(G) The appearance of the tower structure shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color and silhouette properties. The decision of the approving authority shall be final.

(H) No lighting is to be placed on the tower unless specifically required by the Federal Aviation Administration.

(I) Monopoles shall be the preferred tower structure type within the county.

(J) All tower sites shall be identified by means of a sign no larger than 6 square feet affixed to the equipment building or fence enclosure. Said sign shall identify the tower owner and each locating provider and shall provide the telephone number for a person to contact in the event of an emergency.

(K) Site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

(L) No towers are permitted within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

(M) A copy of all reports including the environmental assessment, NEPA review, and SHPO review, as required by or provided to the Federal Communications Commission, shall be included as part of the application.

(N) Towers should be sited within or adjacent to areas of mature vegetation and should be located down slope from ridge lines and towards the interior of a parcel whenever possible and only should be considered elsewhere on the property when technical data or aesthetic reasons indicate there is no other preferable location.

(O) All applications shall include information as to how the applicant has addressed the visual impact of the tower on all county designated preservation areas, such as: rural legacy areas, agricultural preservation areas, critical farms, Monocacy Scenic River, Appalachian Trail, historic sites and sites eligible for designation.

(P) Towers may be permitted within the Mineral Mining (MM) and non-residential Mixed Use Development (MXD) floating zones with the approval of the Planning Commission. Towers shall not be permitted within residential, PUD or residential MXD Districts.

(Q) Communications towers in existence on the effective date of this ordinance (Ord. 99-14-241) shall not be required to comply with these provisions, except in the event they increase the height.

(R) Except as provided in § 1-19-8.332(F) setbacks for communications towers shall be as follows.

(1) Setback from all property zoned residential shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet. Setback distance may be modified by the approving body.

(2) Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.

At the February 24, 2011 hearing, testimony was presented by Mr. Rick Brace, Principal Planner II for Frederick County, Mr. Larry Smith, Frederick County Zoning Administrator, the Applicants and residents in both verbal and written testimony.

In accordance with section 1-19-3.210(A), as noted in testimony, the proposed operation is consistent with the purpose and intent of the Comprehensive Development Plan in that the Board notes in Section 9-24 through 9-28 of the Comprehensive Plan are

provisions for telecommunication towers in Frederick County. The Board further couples this with the provisions of the Code which require the nature and intensity of the special exception to be in harmony with the appropriate and orderly development of the neighborhood. The Frederick County Code provides that one of the principles of the Resource Conservation zone is to preserve the character of the neighborhood and locating the proposed structure next to the existing power poles adjacent to this site does so. As was submitted by the applicant, engineering tests indicated use of the existing power poles for mounting of the proposed antennas was not feasible. Further, a school site in the area was also found not sufficient to provide the necessary coverage.

The Board further finds that the placement of the operation at this location would not be objectionable to neighboring properties due to noise or vibrations and that its visual impacts are minimized by the wooded area on the property. The Applicant indicated they would landscape around the equipment compound and would ensure they not encroach on the recorded septic area just to the north of the proposed compound.

The Board finds that the Application meets the all other requirements of Section 1-19-3.210 of the Zoning Ordinance.

The Applicant's concept plan shows the parking areas all comply with section 1-19-6.220 of the Zoning Ordinance. In addition, the concept plan indicates that the entrance and exit drives do not pose a risk to the safety of those utilizing the site, subject to review at the site plan stage. Furthermore, Staff testimony, Applicant's testimony and site plans identify the road system to the Property as a local road on the Comprehensive Plan, which the Board finds as adequate to serve the site for the proposed use.

The Board adopts as its findings the testimony and exhibits of the applicant as having met the specific criteria, Sec. 1-19-332 and 8.420.2, of the Zoning Ordinance.


For all of the foregoing reasons, the Board of Appeals unanimously grants the Applicants request for a special exception, on a motion from Mr. Duke, seconded by Mr. Dyjak, subject to the condition(s):

1. Applicant is to provide contact information to the Zoning Administrator on an annual basis.
2. Suggest to the Planning Commission to look at the addition of appropriate screening at the site plan stage.
3. Address all agency comments.

Adopted by the Board of Appeals on the 24th day of March, 2011.




John Clapp, Esq., Chair



Alan Duke, Member



Sean Michalski, Member



Carole Jaar Sepe, Member



Brad RR Dyjak, Member

Section 1-19-3.200 (J) A decision of the Board granting a variance or a special exception will be void two years from date of approval unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision.



ACO PROPERTY ADVISORS, INC.

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August 18, 2011

Mr. Tolson DeSa, Principal Planner
Community Development Division
Frederick County, Maryland
30 North Market Street
Frederick, MD 21701

RE: Site Plan Approval for New Cingular Wireless PCS at 6721 Debold Rd, Sabillasville,
MD – Request for Modification to Zoning Ordinance 1-19-6.400.I Landscaping and
Screening

Dear Mr. DeSa,

ACO Property Advisors Inc. on behalf of New Cingular Wireless PCS LLC "AT&T" provides
site acquisition and zoning services to extend AT&T wireless coverage throughout Frederick
County, Maryland.

Currently, the proposal for AT&T site: Sabillasville located at 6721 Debold Rd, Sabillasville, MD
21780, is undergoing a Type I Site Plan Approval. AT&T is requesting consideration from The
Frederick County Planning Commission, due to the sites remote location, existing trees and
vegetation present at the site, the existing landscaping buffering and screening standards be
modified to not require additional landscaping, buffering or screening. This could be
accomplished through:

Frederick County Zoning Ordinance § 1-19-6.400 Landscaping and screening

*(I) The Planning Commission may modify the minimum landscaping, buffering, and screening
standards where a specific finding is made that the required standards result in a practical
difficulty, and where an alternate landscaping, buffering, and screening plan is approved by the
Planning Commission.*

Thank you for taking the time to hear our request, and review our application. Please let me
know if you require additional information or have any questions or comments.

Sincerely,

Steven R. Kinley
Director of Wireless Services
(518) 461-4485
Steve@ACOPROPERTYADVISORS.COM

**Real Estate
Consultants • Development • Brokerage • Wireless Services**